By: Dean H.B. No. 2821

Substitute the following for H.B. No. 2821:

By: Burrows C.S.H.B. No. 2821

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of cemeteries and the administration of perpetual care trust funds.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 711.056(a), Health and Safety Code, is amended to read as follows:

(a) If after a hearing conducted as provided by Chapter 2001, Government Code, the trier of fact finds that a violation of this chapter or a rule of the Finance Commission of Texas establishes a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission, the trier of fact may [~~shall~~] recommend to the commissioner that the maximum administrative penalty permitted under Section 711.055 be imposed on the person committing the violation or that the commissioner cancel or not renew:

(1) the person's registration under Subchapter C-1, if the person is registered under that subchapter; or

(2) the person's permit under Chapter 154, Finance Code, if the person holds such a permit.

SECTION 2. Section 712.0034, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) To qualify for a certificate of authority under this chapter, an applicant must demonstrate to the satisfaction of the

commissioner that:

(1) the applicant's business ability, experience, character, financial condition, and general fitness warrant the public's confidence;

(2) the cemetery operations manager has at least two years of experience in cemetery management;

(3) the issuance of the certificate of authority is in the public interest;

(4) the applicant, a principal of the applicant, or a person who controls the applicant does not owe the department a delinquent fee, assessment, administrative penalty, or other amount imposed under this chapter or a rule adopted or order issued under this chapter; and

(5) the applicant corporation:

(A) is in good standing and statutory compliance with this state;

(B) is authorized to engage in the perpetual care cemetery business in this state; [~~and~~]

(C) does not owe any delinquent franchise or other taxes to this state; and

(D) wholly owns all land on which the perpetual care cemetery will be located.

(c) For purposes of Subsection (b)(5)(D), an applicant corporation is considered to wholly own land regardless of whether the land is subject to a mortgage, deed of trust, or other lien.

SECTION 3. Section 712.0037, Health and Safety Code, is amended by adding Subsections (a-1) and (a-2) to read as follows:

(a-1) Notwithstanding Subsection (a), a certificate holder holding a certificate of authority issued before September 1, 2017, that does not on that date satisfy the ownership requirement under 712.0034(b)(5)(D) is not required to satisfy that ownership requirement as a condition of renewal until September 1, 2022. The commissioner may extend the period of compliance for the ownership requirement if the certificate holder:

(1) files a written application for the extension in the form and manner required by the department; and

(2) shows good cause for the extension.

(a-2) This subsection and Subsection (a-1) expire September 1, 2028.

SECTION 4. Section 712.021, Health and Safety Code, is amended by amending Subsections (a) and (g) and adding Subsection (h) to read as follows:

(a) Except as provided by Subsection (h), a [~~A~~] corporation that operates a perpetual care cemetery in this state shall have a fund established with a trust company or a bank with trust powers that is located in this state. The trust company or bank may not have more than one director who is also a director of the corporation.

(g) In this subsection, "master trust account" means an account containing the perpetual care trust funds of two or more certificate holders for the purpose of collective investment and administration. The trustors of two or more perpetual care trust funds may establish a master [~~common~~] trust account [~~fund~~] in which deposits required by this chapter are made, provided that separate

records of principal and income are maintained for each perpetual care cemetery for the benefit of which the master [~~common~~] trust account [~~fund~~] is established, and further provided that the income attributable to each perpetual care cemetery is used only for the perpetual care of that cemetery.

(h) A corporation may apply to the commissioner for temporary relief and placement of a perpetual care trust fund in a segregated interest bearing account at a Texas financial institution, as defined by Section 201.101, Finance Code, if the corporation:

(1) has been operating a perpetual care cemetery in this state for at least two years; and

(2) has a perpetual care trust fund with a balance of less than $100,000, the income of which is insufficient to pay trustee fees.

SECTION 5. This Act takes effect September 1, 2017.